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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

THE STATE OF OREGON, KATE BROWN,
Governor; ELLEN ROSENBLUM, Attorney
General; and THE CITY OF PORTLAND,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United
State, in his official capacity; MATTHEW G.
WHITAKER, Acting Attorney General of the
United States, in his official capacity; and the
UNITED STATES OF AMERICA,

Defendants.

Case No. 6:18-cv-01959-MC

DECLARATION OF TIMOTHY D. SMITH

I, Timothy D. Smith, declare:

1. I am a Senior Assistant Attorney General in the Civil Recovery Section of the Oregon Department of Justice. I am one of the attorneys representing Plaintiffs State of Oregon, Kate Brown, and Ellen Rosenblum. I make this declaration based on my personal knowledge, and I am competent to testify on the matters stated.

2. I make this declaration in support of the First Amended Complaint for Declaratory, Injunctive, and Mandamus Relief and also in support of Plaintiff's Combined Motion for Summary Judgment and Response to Defendant's Motion to Dismiss.

3. Attached as Exhibit 1 and incorporated herein by reference is a true and correct copy of a January 3, 2018 article from Newsweek confirming statements made by Thomas Homan, then acting director of Immigration and Customs Enforcement ("ICE"). Mr. Homan said, "We gotta take [sanctuary cities] to court, and we gotta start charging some of these politicians with crimes."

4. Attached as Exhibit 2 and incorporated herein by reference is a true and correct copy of a January 4, 2018 report from CNN confirming additional statements made by Mr. Homan, as acting director of ICE. Mr. Homan made the following statements regarding California's status as a sanctuary state: "California better hold on tight. They're about to see a lot more special agents, a lot more deportation officers in the state of California."

5. Attached as Exhibit 3 and incorporated herein by reference is a true and correct copy of Written Testimony of Kirstjen M. Nielsen, Secretary of the Department of Homeland Security for hearing on "Oversight of the United States Department of Homeland Security" before the United States Senate Committee on the Judiciary on Tuesday, January 16, 2018. In her written testimony, Secretary Nielsen stated that "[t]o further protect our communities, we must end so-called 'sanctuary' jurisdictions." Ex. 3 at Page 9. Ms. Nielsen also stated that "[s]tates and localities that refuse to cooperate with federal authorities should be ineligible for funding from certain grants and cooperative agreements." Id.

6. Attached as Exhibit 4 and incorporated herein by reference is a true and correct copy of a January 17, 2018 letter from Senators Kamala D. Harris and Dianne Feinstein to then Attorney General Jeff Sessions and Secretary of Homeland Security Kirstjen M. Nielsen. According to Senators Harris and Feinstein, “[d]uring a January 4, 2018 interview on Fox News, Immigration and Customs Enforcement (ICE) Acting Director Thomas Homan said he asked the United States Justice Department (DOJ) to ‘look into criminal charges for elected officials with sanctuary policies as they are harboring illegal aliens’ under Section 1324 of Title 8 of the United States Code.” According to Senators Harris and Feinstein, “[i]n an oversight hearing before the Senate Judiciary Committee on January 16, 2018, Secretary Kirstjen Nielsen confirmed that ‘[t]he Department of Justice is reviewing what avenues might be available [to the Department of Homeland Security to charge elected officials such as these].’”

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on March 14, 2019.

s/ Timothy D. Smith
TIMOTHY D. SMITH
Senior Assistant Attorney General

U.S.

TRUMP'S ICE PICK THOMAS HOMAN WARNS SANCTUARY STATE CALIFORNIA 'HANG ON TIGHT' AMID IMMIGRATION CRACKDOWN

BY HARRIET SINCLAIR ON 1/3/18 AT 4:08 AM



Thomas Homan, acting director of the Immigration and Customs Enforcement Agency (ICE), speaks during a briefing at the White House, June 28, 2017.
YURI GRIPAS/REUTERS

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U.S. THOMAS HOMAN ICE DONALD TRUMP

Donald Trump's pick to run Immigration and Customs Enforcement (ICE) has issued a chilling warning to California to "hang on tight" as he threatened a crackdown on so-called sanctuary cities, also suggesting politicians who back sanctuary status should be charged with crimes.

there is a limit on how far local law enforcement will aid ICE officials.

In particular, Homan pledged California would see more ICE agents following its governor's October decision to give the entire state such status.

"We gotta take [sanctuary cities] to court, and we gotta start charging some of these politicians with crimes," Homan said in an interview with Fox News' Neil Cavuto, explaining he believed politicians who pushed sanctuary city legislation should be held "personally accountable" for their actions.

ICE Director Rips California Sanctuary State Law



His comments came during a discussion on the move by California Governor Jerry Brown to sign into state law a bill giving the whole of California sanctuary status, in a move that appears to have infuriated immigration hardliner Homan.

"I think it's terrible—you got the state of California that wants to put politics ahead of public safety, ahead of officer safety. What they have done is forced my officers to arrest dangerous criminals on their turf, in their homes and places of business, rather than arresting them in the safety and security of a county jail. It's ridiculous to annoyingly and intentionally put law enforcement at risk," he said.

"If he thinks he's protecting immigrant communities, he's doing quite the opposite because if he thinks ICE is going away, we're not. There's no sanctuary from federal law enforcement. Matter of fact we're in the process now... I'm going to significantly increase our enforcement presence in California, we're already doing it."

"California better hold on tight. There's about to see a lot more special agents, a lot more deportation hours in the state of California," he added.

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Homan, who has been acting director of the department since January and was announced as Trump's pick to permanently lead the department in December, has maintained a hard line on immigration, previously talking tough on undocumented immigrants when testifying before Congress in June.

"If you choose to enter this country illegally, which is a crime, you should be concerned. You violated a law in this country, and I'll tell you, you can't have it both ways," Homan said. "You can't be part of this country and not respect its laws."

Later in June, Homan said, "Sanctuary jurisdictions pose a threat to the American public by refusing to work with ICE and allowing egregious criminal offenders back into the community to put the lives of the public at risk."

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California 'sanctuary state' law leads ICE to increase presence, director says

By Dakin Andone, CNN

Updated 5:59 PM ET, Thu January 4, 2018



Thomas Homan

(CNN) — The acting director of immigration and Customs Enforcement told a Fox News host the agency would increase its presence in California in response to the state's so-called sanctuary state law.

Speaking to Neil Cavuto on Fox News on Tuesday, Thomas Homan said he couldn't believe California had voted to become a sanctuary state, calling the decision terrible and saying the state wants "to put politics ahead of public safety."

"California better hold on tight," Homan said. "They're about to see a lot more special agents, a lot more deportation officers in the state of California."

"If the politicians don't want to protect their communities," he said, "then ICE will."



Related Article: What are sanctuary cities, and can they be defunded?

The law bars state and local law enforcement agencies from using their resources to assist federal immigration authorities. Local law enforcement agents are prohibited from inquiring about immigration status or giving federal immigration authorities access to interview a person in custody.

Gov. Jerry Brown signed the law in October, and it went into effect this year.

Homan's remarks were the latest escalation in the battle between the Trump administration and cities and states with so-called sanctuary policies, which seek to protect undocumented immigrants who have run-ins with law enforcement from being handed over to federal authorities.

In November, a federal judge blocked an executive order by the President that sought to strip sanctuary cities of receiving federal funding.

Homan also told Cavuto he believes sanctuary cities face charges from the Department of Justice and should have their funding withheld. And politicians should be held responsible, he added.

"I mean, more citizens are going to die because of these policies," Homan said. "We need to hold these politicians accountable for their actions."



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New year, old rhetoric from Washington. Here in California, we'll stay the course and enforce our laws that protect our communities and make CA's economy #1 in the nation:
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Acting Immigration and Customs Enforcement Director Thomas Homan said California "better hold on tight" after its liberal Democratic governor
insider.foxnews.com

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"New year, old rhetoric from Washington," said California Attorney General Xavier Becerra, sharing a link to a clip of Homan's interview on Twitter. "Here in California, we'll stay the course and enforce our laws that protect our communities and make CA's economy #1 in the nation."



WRITTEN TESTIMONY

OF

**KIRSTJEN M. NIELSEN
SECRETARY**

DEPARTMENT OF HOMELAND SECURITY

FOR A HEARING ON

"Oversight of the United States Department of Homeland Security"

BEFORE THE

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

Tuesday, January 16, 2018

Introduction

Chairman Grassley, Ranking Member Feinstein, and members of the Committee, thank you for the opportunity to testify before you today. The men and women of the Department of Homeland Security (DHS) are working tirelessly to make our communities safer and our Nation more secure, and I am honored to speak on their behalf.

While both our Department and this Committee oversee a broad portfolio, today my prepared remarks will focus on the current threat environment, our efforts to elevate the baseline of our security posture across the board, and how our Department's immigration priorities are helping to secure our Nation by recognizing that the American people are the primary stakeholders in our Nation's immigration system.

Protecting Our Open Society in a New Age of Terrorism

Today, we face a serious and persistent terror threat that, according to my assessment, will not diminish anytime soon. While we have made it harder for terrorists to execute large-scale attacks, changes in technology have made it easier for adversaries to plot attacks in general, to inspire and radicalize new followers, and to recruit beyond borders. The problem is compounded by the use of simple, "do-it-yourself" terror tactics.

Acts of terror and mass violence have become all-too-frequent around the world, and our enemies continue to target us throughout the West: Paris, San Bernardino, Brussels, Orlando, Istanbul, Nice, Berlin, London, Barcelona, New York City, and beyond. As the United States and our allies drive ISIS from its safe haven in Syria and Iraq, we are seeing operatives disperse, and we are concerned those foot soldiers will start focusing more heavily on external operations against the United States, our interests, and our allies as they have lost territory.

The October 31, 2017 attack in New York City is a prime example of how terrorism is evolving. The suspect was apparently radicalized in part by online terrorist propaganda, his attack plotting went undetected, he choose a public area as his target, and selected a vehicle as his weapon. At the same time, terrorists overseas are experimenting with more sophisticated tools—including drones, chemical weapons, and artfully concealed improvised explosive devices—to further spread violence and fear. In short, what was once a preference for large-scale attacks is now an "all-of-the-above" approach to terrorism.

Today, I want to highlight the threat to so-called soft targets. Large gatherings and public venues and events are appealing targets for terrorists and violent criminals because of their accessibility and the potential to inflict significant physical, psychological, and economic damage. That is why DHS is working to help our state, local, tribal, territorial, and private sector partners—and the public—better protect such sites and events. We actively share intelligence bulletins and analysis with homeland security stakeholders nationwide to make sure they understand the danger, use best practices to counter nascent attack methods, train frontline defenders to combat such threats, and are always on alert to the potential for violent incidents.

Our National Protection and Programs Directorate (NPPD) is helping to lead the charge on soft target security, and in the coming weeks we expect to roll out additional information about how we are stepping up our efforts even further. Our goal is to:

- Demonstrably reduce the risk of successful attacks on soft targets;
- Ensure the Department has the capability to support visible efforts to enhance soft target security in order to safeguard the American people;
- Develop a “center of gravity” for Department-wide resources available to support the critical infrastructure community in securing soft targets; and
- Promote a dynamic process to identify and address soft target security gaps based on threats and incidents.

DHS manages programs that provide training and informational resources focused on active shooter preparedness, which play a key role in preparing facilities and their employees to proactively think about the role they play in the safety and security of their businesses and communities. This includes efforts like the Hometown Security Initiative, which develops critical partnerships between the private sector and the public sector to provide expert counsel and recommendations about protective measures they can implement to protect facilities and venues in their communities.

In addition, the DHS Federal Law Enforcement Training Center’s Private Public Partnership Academy brings together commercial shopping center executives, their private security professionals, and their local law enforcement representatives to receive standardized training in active shooter threat mitigation strategies and tactical medical training, and to practice these skills in large public event gathering exercises. Furthermore, the Science and Technology Directorate’s SAFETY Act Program provides critical incentives for the development and deployment of anti-terrorism technologies by providing liability protections for “qualified anti-terrorism technologies.” This applies to a number of stadiums nationwide, too, which can leverage the Program to better protect major events and gatherings.

Advance Terrorism Prevention Efforts

In addition to *counterterrorism*, the Department is rededicating itself to *terrorism prevention*. Americans do not want us to simply stop violent plots, they want us to keep them from materializing in the first place. As part of this effort, we have launched an end-to-end review of all DHS terrorism-prevention programs, projects, and activities. In the coming months we will work to ensure our approach to terrorism prevention is risk-based and intelligence-driven, focused on effectiveness, and provides appropriate support to those on the frontlines whom we rely on to spot signs of terrorist activity.

DHS efforts to combat terrorist recruitment and radicalization fall into several primary categories, including: (1) prioritizing education and community awareness; (2) focusing on counter-recruitment; (3) emphasizing the importance of early warning through better reporting of suspicious activity; and (4) promoting early intervention.

I know this Committee has spent a good deal of time working with the technology companies on the terror threat. We have had robust and ongoing engagement with the technology sector to increase its efforts to address terrorists' use of the internet, including combating terrorist messaging online. This falls into our "counter-recruitment" line of effort. While the internet itself is not the source of the problem, it is abused to promote radicalization, recruitment to violence, and to raise funds for terrorist organizations.

Earlier this year, Deputy Secretary Duke traveled to San Francisco to meet with the Global Internet Forum to Counter Terrorism (GIFCT), a consortium of tech companies, including Facebook, Twitter, Microsoft, and Google, which are working to counter terrorists exploiting their platforms. She also conferred with them at a G7 Interior Ministers Meeting in Italy in October, and I am pleased to report we have seen progress and responsiveness as a result of these engagements.

Even though there is still more to be done, the companies are directly addressing our concerns by taking important steps to make their platforms less hospitable to terrorists. I am going to continue these high-level engagements to keep up the momentum, and I plan to travel out West to confer with these companies again in the coming weeks.

Aviation Security

When it comes to counterterrorism priorities, commercial aviation remains a major concern. We have seen a spider web of threats against the aviation sector, which continues to be a top target for global jihadist groups. We are working with our partners across the global aviation community to collaborate, innovate, and implement new security practices in the face of evolving threats.

This summer, we announced new "seen" and "unseen" security measures, representing the most significant aviation security enhancements in many years. Indeed, our ongoing Global Aviation Security Plan is making U.S.-bound flights more secure and will raise the baseline of aviation security worldwide. We have required the implementation of security measures at *all* Last Point of Departure airports to the United States, including enhancements to protect aircraft against concealed explosives, to counter insider threats, and to better identify suspicious passengers. In September 2017, we also initiated new measures, utilizing the Transportation Security Administration's (TSA) Security Directives and Emergency Amendments (SD/EAs), to address threats to cargo aircraft inbound to the United States. These measures require certain carriers to provide additional data to allow U.S. Customs and Border Protection (CBP) to better assess the risk of shipments prior to loading. We continue to review ways to address threats and raise the baseline of cargo security screening overseas, including further SD/EAs to expand cargo security enhancements to additional countries.

International organizations also play a vital role in strengthening transportation security around the globe. For example, the United States is a Member State of the International Civil Aviation Organization (ICAO), an arm of the United Nations that sets safety and security standards for international air travel. TSA is urging ICAO to adopt more rigorous security standards and is encouraging ICAO members to join us in embracing innovation.

TSA's aggressive pursuit of innovation includes exploring the use of Computed Tomography systems at airport checkpoints. These systems feature improved 3D-imaging and enhanced detection capabilities and will play an important role in our Global Aviation Security Plan. TSA has also started testing credential authentication technologies at a number of airports to help verify passengers' identities and their ticketing and vetting status. Other technologies with promise are mobile handheld solutions that quickly and easily identify explosives. Consistent with the longstanding practice of the Department, as we pilot, test, or implement these new technologies and programs, we will continue to review the privacy impacts of their deployment, report on our findings, and work closely with airports and industry.

In many of these areas, we will continue to need Congressional assistance, especially as we work to keep up with our enemies' changing tactics. In some cases, DHS and other departments and agencies lack certain legal authorities to engage and mitigate the emerging dangers we are seeing. For example, we lack the authorities needed to counter threats from unmanned aircraft systems (UAS). We know that terrorists are using drones to conduct aerial attacks in conflict zones, and already we have seen aspiring terrorists attempt to use them in attacks outside the conflict zone. This is a very serious concern for the Department.

Last year, the Administration delivered a government-wide legislative proposal to Congress that would provide additional counter-UAS authorities to DHS and other federal departments and agencies to legally engage and mitigate UAS threats in the National Airspace System. After extensive discussions, we are working to provide an updated proposal to Capitol Hill. In the meantime, I am eager to share our concerns in a classified setting, which we recently did with the House Homeland Security Committee. I expect to have the legislative proposal to you in the next few weeks, and I urge the Committee to help champion efforts to resolve this challenge.

Vetting and Screening

At the President's direction, the Department is undertaking historic efforts to secure our country. The goal is to prevent national security threat actors, especially terrorists and criminals, from traveling to the United States, while better facilitating lawful trade and travel. The Administration has made it a priority to intensify screening and vetting and to provide the American people the security they deserve. All foreign nationals—no matter how they try to get into our country—now face tougher vetting and tighter screening. The changes have made it harder for terrorists, criminals, and other nefarious actors to reach America.

This is important. The majority of individuals convicted on terrorism charges in the United States since 9/11 were foreign-born. While not all were radicalized before coming to the United States, we must do everything we can to detect individuals with terror ties or those who have been radicalized to violence *before* they reach our country. At the same time, our policies will be shaped by risk so that we focus on identifying nefarious actors while effectively facilitating the lawful entry of peaceful, freedom-loving people from around the world.

To that end, DHS is improving almost every stage of the vetting process for immigrants, refugees, and other U.S.-bound individuals, from applications to arrivals. For instance, we are enhancing applicant interviews by making them more intensive and helping interviewers better

identify hidden terror ties, signs of radicalization, and fraud. We are requiring more data from applicants on their backgrounds, employment history, associates, travel, and more to verify their claims and detect unusual activity. We are also better leveraging biometrics to validate traveler identities and spot persons of interest.

Investigations are also being intensified. DHS is bringing investigations into the digital age by collecting more social media data from applicants and screening it against classified and unclassified information, as appropriate. Our frontline personnel are fusing more intelligence into the immigration and travel process to uncover previously unknown terrorism, criminal, and other suspicious connections. We are expanding round-the-clock security checks, ensuring that, where appropriate, individuals are continuously vetted against intelligence and criminal databases, rather than only at the time of their application.

Additionally, travel and arrival procedures have been tightened. As noted earlier, we are launching sweeping aviation security enhancements so that all U.S.-bound passenger flights are better protected against insider threats, concealed explosives, and dangerous travelers. DHS has bolstered dedicated counterterrorism teams at U.S. ports of entry, allowing us to more effectively catch terror suspects that may have slipped through the cracks. We have already seen very real successes from this array of enhancements. I cannot get into the details in this setting, but I can share that these measures have allowed us to detect and disrupt terror suspects we likely would not have identified otherwise.

In the medium term, DHS is looking at making further improvements. We are examining broad ways to streamline how we organize our vetting activities across the interagency. This includes consolidating screening and vetting functions, further integrating intelligence data where appropriate, and better leveraging law enforcement information.

The Department has also implemented historic efforts to step up international cooperation. For the first time ever, DHS established a clear baseline for what countries must do to help the United States confidently screen travelers and immigrants from their territory. Every country in the world is now required to meet high security standards and to help us understand who is coming into our country. As required under President Trump's *Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States* (EO 13780), all foreign governments have been notified of the new standards, which include the sharing of terrorist identities, criminal history information, and other data needed to ensure public safety and national security, as well as the requirement that countries issue secure biometric passports, report lost and stolen travel documents to INTERPOL, and take other essential actions to prevent identity fraud.

DHS assessed whether countries meet the new standards, in coordination with the Department of State and the Department of Justice. For countries that failed to do so, DHS recommended to the President that nationals of those countries be subject to tailored entry restrictions or other lawful limitations and security enhancements, which he effectuated through a Presidential proclamation in October. Most foreign governments already meet the minimum standards we outlined or are on the path to doing so. But we are working closely with the governments that did not meeting the standards, and we have warned countries that are willfully noncompliant that the

United States puts the security of its people first and will continue to enforce these reasonable, baseline requirements and restrictions.

Let me be clear: this has nothing to do with race or religion, and our goal is certainly not to block people from visiting the United States. America is proud of its history as a beacon of hope to those who want to visit our country or become a part of our enduring democratic republic. Rather, the goal is to protect Americans and ensure foreign governments are working with us—and not inhibiting us—from stopping terrorists, criminals, and other national security threat actors from traveling into our communities undetected.

Visa Waiver Program

We are also looking at ways to further strengthen the Visa Waiver Program (VWP). First and foremost, the VWP is a security partnership program. It mandates high and consistent standards from partner countries in the areas of national security, law enforcement, and immigration enforcement to detect and prevent terrorists, criminals, and other potentially dangerous individuals from traveling to the United States—while still facilitating legitimate travel and tourism.

Currently, 38 countries participate in the VWP, which allows their citizens to travel to the United States for business or tourism for stays of up to 90 days after applying and being approved through the Electronic System for Travel Authorization (ESTA). In return, these countries must comply with program requirements to enter into information-sharing protocols that enable the relay of information concerning known and suspected terrorists and criminals; consistent and timely lost and stolen passport information reporting; and robust border and travel document screening. As a result of these program requirements, countries have adopted new laws, policies, and practices that strengthen our mutual security.

The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, combined with Secretarial action, have strengthened the VWP's security provisions over the past two years. VWP countries are now required to issue high-security electronic passports (e-passports); implement information sharing arrangements to exchange terrorist identity information; establish mechanisms to validate e-passports at each key port of entry; report all lost and stolen passports to INTERPOL or directly to the United States no later than 24 hours after the country becomes aware of the loss or theft; and screen international travelers against the INTERPOL Stolen and Lost Travel Documents (SLTD) database and notices. As with other operational activities of DHS, a full discussion of the privacy impact of these initiatives and how we mitigate the risk to personal privacy is available on our website.

Since enactment of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act, DHS has realized an increase in the sharing of terrorist identity information. Several countries have increased the frequency of their reporting of lost and stolen passports—VWP countries account for over 70 percent of the almost 73 million lost and stolen travel documents reported to INTERPOL. All VWP countries are now issuing and using for travel to the United States fraud-resistant e-passports that meet or exceed the ICAO standards. Over 70,000 ESTA applications

have been denied, cancelled or revoked under enforcement of the VWP Improvement Act's eligibility restrictions for VWP travel.

But there is always room for improvement. In May 2017, former Secretary Kelly directed the Department to review and provide options to further enhance VWP. Since then, DHS has worked—both internally and with our interagency partners—to evaluate a number of recommendations. Last month I announced new changes, as a result of this review, which will make our country more secure and make it harder for terrorists to cross international borders and, ultimately, to get closer to our shores.

Broadly, the new measures will *require* our foreign partners to use the counterterrorism data we provide them to screen travelers transiting their territory; expand and standardize our ability to share and receive information that enhances our ability to identify, monitor, and counter known and suspected terrorists and other individuals who may pose a threat to the United States; address the problem of visitors overstaying when traveling under the VWP; and synchronize efforts to raise security standards under TSA's Global Aviation Security Plan, in particular by ensuring foreign partners are taking action to defend against insider threats to aircraft.

The bottom line is that, in order to attain and maintain VWP designation and visa-free travel to our territory, a country and its nationals cannot represent a threat to the United States and must be working in partnership with us to prevent terrorist travel. In all instances, as the Secretary of Homeland Security, I retain and will use the statutory authority to suspend or terminate a country's participation in the VWP if there is a credible threat originating from that country that poses an imminent danger to the United States or its citizens.

Border Security

We are also strengthening our border security and our enforcement of immigration laws. This Administration's immigration principles will ensure safe and lawful admissions, defend the safety and security of our country, and protect American workers and taxpayers. Border security involves preventing illegal entry of goods and people along more than 7,000 miles of land along our southern and northern borders, approximately 95,000 miles of shoreline, and at 328 ports of entry. Overall, apprehensions at the southern border have decreased, which leads us to believe that fewer people are attempting illegal entry. In Fiscal Year (FY) 2016, there were 408,870 apprehensions at the Southern Border; in FY 2017, there were 303,916. That's a decrease of nearly 26 percent and it represents the lowest level in 45 years.

However, make no mistake: that is nearly one thousand illegal immigrants coming across our border every day. This is an unacceptable risk to public safety and national security. Additionally, since last spring, we have seen a dangerous increase in border crossings by families and unaccompanied alien children. We must gain operational control of our borders. DHS needs Congressional support to deter illegal immigration and fully execute the President's Executive Orders on immigration.

In compliance with Executive Order 13767: *Border Security and Immigration Enforcement Improvements*, DHS has conducted a comprehensive study of the security of the southern border

that addresses all of the elements that provide an integrated solution for the Nation. Our first priority is to expand on our existing southern border wall system and close legal loopholes that encourage and enable illegal immigration and create a corresponding backlog in the courts. We currently have an immigration court backlog of more than 650,000 cases pending before the Department of Justice's Executive Office for Immigration Review. We also have a massive asylum backlog with more than 270,000 pending cases before U.S. Citizenship and Immigration Services (USCIS). Recognizing the unsustainability of the asylum case backlog, USCIS has implemented efficiency measures designed to reduce adjudication times. Similarly, the Department of Justice has taken action to reduce unwarranted case continuances in immigration courts, which helps reduce the backlog while affording aliens full and fair hearings. To further reduce the "pull factors" and restore integrity to our immigration benefits adjudication process, we must tighten case processing standards, including the "credible-fear" standard, impose and enforce penalties for fraud, and ensure applicants are fully vetted before they are allowed access to the United States.

We must expedite the removal of illegal border-crossers and ensure that unaccompanied alien children and their family members are safely and expeditiously returned to their home countries, if they are not eligible for asylum or other relief from removal, while at the same time appropriately processing those with valid protection claims. To reduce the immigration court backlog and make the removal process more efficient, we seek to hire an additional 1,000 ICE attorneys over the next few years, and support the Department of Justice's hiring of an additional 370 Immigration Judges. We also seek to discourage illegal re-entry by enhancing penalties and expanding categories of inadmissibility.

In addition, visa-overstays account for roughly 40 percent of all illegal immigration in the United States. In FY 2016, more than 628,000 aliens overstayed their visas. By increasing overstay penalties and expanding ICE's enforcement tools, we can help ensure that foreign workers, students, and visitors respect the terms of their temporary visas. We need Congress to authorize the Department to raise and collect fees from immigration benefit applications to fund additional enhancements to our immigration system called for by the President's Executive Orders.

The President has outlined much of the above in his immigration legislation principles, and with Congress, we have reached a general consensus on four corners of an immigration deal: border security, to include the authority to remove people we apprehend quickly, according to the rule of law and court orders; ending the diversity visa; ending extended family chain migration; and finding a permanent solution for the current Deferred Action for Childhood Arrival (DACA) recipients. While there are other items to be addressed, these four pillars are the minimum we need to secure our country.

We are looking for a permanent solution to our immigration and border security problems. We cannot be here again debating the same issue in two, five, or ten years. I look forward to working with any and all members of Congress to find a solution to our immigration and border security needs.

Drugs

In the U.S. the illicit drug consumption has resulted in a national health crisis, as stated by President Trump regarding the opioid crisis. But the true threat is much broader and includes the increasing illicit drug supply trafficked into the United States by transnational criminal organizations. This is a National Security threat as stated in the National Security Strategy: “The United States must devote greater resources to dismantle transnational criminal organizations and their subsidiary networks.....Every day they deliver drugs to American communities, fuel gang violence, and engage in cybercrime. The illicit opioid epidemic, fed by drug cartels as well as Chinese fentanyl traffickers, kills tens of thousands of Americans each year.”

DHS is committed to improving our drug detection capability and refocusing our border security efforts to stop more of these deadly and pernicious substances from entering our country. DHS is working closely with its federal, state, and local law enforcement partners, to interdict shipments of fentanyl and other opioids in transit to the United States, and is targeting these organizations domestically and internationally, to disrupt the flow of these dangerous drugs through illicit pathways into the United States.

Enforcing Immigration Laws

We are also prioritizing the enforcement of our immigration laws in the interior of our country. There are nearly one million aliens with final orders of removal across the country—meaning these removable aliens were afforded due process of law, had their day in court, and were ultimately ordered removed by a judge—yet they remain in our nation and ICE only has 6,000 Deportation Officers to arrest and remove them. The Administration looks to strengthen law enforcement by hiring 10,000 more ICE officers and agents, and supports the request from the Department of Justice to hire 300 more federal prosecutors.

To further protect our communities, we must end so-called “sanctuary” jurisdictions. Hundreds of state and local jurisdictions across the country that do not honor requests from ICE to hold criminal aliens who are already in state and local custody. Instead, they allow them back into their communities, where they are allowed to commit more crimes. This also poses a greater risk of harm to ICE officers, who must locate and arrest these criminals in public places, and increases the likelihood that the criminal aliens can resist arrest or flee. Rather than enhancing public safety, sanctuary jurisdictions undermine it. The only “sanctuary” these jurisdictions create is a safe haven for criminals. States and localities that refuse to cooperate with federal authorities should be ineligible for funding from certain grants and cooperative agreements. Authorizing and incentivizing states and localities to enforce immigration laws would further help ICE with its mission and make all communities safer.

In FY 2017, 1,761 criminal illegal aliens were released from ICE custody because of a 2001 Supreme Court decision that generally requires ICE to release certain removable aliens with final orders of removal—including violent criminals—within 180 days, if they have not been removed and there is no significant likelihood of removal in the reasonably foreseeable future. Legally insupportable judicial interpretations of the law regarding the detention and removability of criminal aliens have eroded ICE’s authority to keep aliens in custody pending removal. I urge

Congress to legislatively correct these errors and expand the authority for mandatory detention for criminal aliens. This will help end years of court-ordered “catch-and-release” and improve community safety.

Buy American, Hire American

With the issuance of Executive Order 13788, *Buy American and Hire American*, the President directed me, along with the Secretaries of State and Labor and the Attorney General, to propose new rules and issue new guidance, and revise existing rules and guidance as soon as practicable, “to protect the interests of United States workers in the administration of our immigration system, including through the prevention of fraud and abuse.” I take that directive to heart. The Department is fully committed to eradicating fraud and abuse in our immigration system in order to serve the interests of Americans. Such a system must help create higher wages and employment rates for U.S. workers, and protect their economic interests by seeking to ensure that employment-based visas are awarded to the most-skilled beneficiaries. DHS is working on a combination of rulemaking, policy memoranda, and operational changes to implement this important initiative.

Pursuant to this Executive Order, USCIS announced it will take a more targeted approach to combatting fraud and abuse in the employment-based visa programs, including the H-1B program. To help end H-1B petitioner fraud and abuse, USCIS has established a Targeted Site Visit and Verification Program (TSVVP). Targeted site visits allow USCIS to focus its resources where fraud and abuse of certain programs are more likely to occur. TSVVP initially focused on H-1B petitions filed by companies that are H-1B dependent (as defined by statute), employers petitioning for H-1B workers who will be placed off-site at another company’s location, or cases where USCIS cannot validate the H-1B petitioner’s business information through commercially-available data.

USCIS has also taken great strides to improve transparency with the public about employment-based immigration programs. The agency has published new data on its website to give the public more information regarding the use of nonimmigrant workers in the H-1B, H-2B, and L nonimmigrant programs. Information about the use and legal authority for employment authorization documents has also been published.

In connection with protecting U.S. workers, the Department is looking at ways to expand and enhance the E-Verify system. Currently, more than 700,000 employers use the free, web-based system to verify the work eligibility of their workforce. By preventing employers from hiring illegal alien labor and displacing U.S. workers, we can improve job opportunities and raise wages for U.S. workers by making it more difficult for illegal aliens to obtain lawful employment. We need Congress to pass legislation to strengthen the E-verify program and, at a minimum, make it mandatory for all employers. The Department stands ready to implement such a directive.

Going forward, DHS will release additional data about immigration programs that affect employment, and additional policies and regulations will be revised in accordance with Executive Order 13788.

As my predecessors often noted, DHS enforces the laws but has no power to make them; only Congress can do that. The President has repeatedly made clear that our immigration system must serve the national interest, and I ask this Committee to consider legislative reforms to implement the Administration's immigration principles. We need Congress to act to make our streets safer, to give our officials the tools they need to protect American workers, and provide relief to those who are lawfully eligible for protection under our immigration laws. DHS remains committed to working with Congress to achieve these important objectives.

Legal Immigration Reforms

The United States has one of the most generous immigration systems in the world. Every day, an average of nearly 2,000 people become U.S. citizens. Our Nation has a long history of welcoming immigrants who came to this country in search of freedom and opportunity. Providing lawful permanent resident status based primarily on merit—not solely on family connections—would promote assimilation, financial independence, and upward mobility for immigrants. By establishing a points-based system for merit-based migration, the predominant system in most developed countries, we can attract the highest-caliber immigrants, and begin to roll back decades of policies that have suppressed wages, contributed to income disparities, fueled unemployment, and strained state and federal resources.

Therefore, our immigration system must be radically reformed to meet the economic needs of our country. Most low-skilled immigration into the United States occurs legally through our immigrant-visa system, which, unlike many other countries' systems, prioritizes family-based chain-migration. Each year, the United States grants lawful permanent resident status (green cards) to more than one million people; two-thirds of that total is based on a person having a sponsoring relative in the United States, regardless of the new immigrant's skills, education, English language proficiency, or ability to successfully assimilate. This system of chain-migration has accounted for more than 60 percent of immigration into the United States over the past 35 years. We must end chain-migration, and limit family-based green cards to spouses and the minor children of U.S. citizens and lawful permanent residents.

We must also eliminate the "diversity visa" lottery. Every year, through this lottery, 50,000 green cards are awarded at random to foreign nationals. Many of these lottery beneficiaries have absolutely no ties to the United States, no special skills, and limited education. The random lottery program has not been adopted by other countries and does not adequately serve our national interest.

Conclusion

Chairman Grassley, Ranking Member Feinstein, and distinguished members of the Committee, I thank you again for the opportunity to testify today. The challenges I have laid out are great, but the Department stands ready to execute its mission to secure the homeland. In partnership with Congress, we will continue to adapt to meet the current threat environment and prepare for the future. I look forward to your questions.

United States Senate

WASHINGTON, DC 20510

January 17, 2018

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable Kirstjen M. Nielsen
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Ave, NW
Washington, D.C. 20016

Dear Attorney General Sessions and Secretary Nielsen:

During a January 4, 2018 interview on Fox News, Immigration and Customs Enforcement (ICE) Acting Director Thomas Homan said he asked the United States Justice Department (DOJ) to “look into criminal charges for elected officials with sanctuary policies as they are harboring illegal aliens” under Section 1324 of Title 8 of the United States Code. This law makes it illegal for a person to knowingly conceal, harbor, or shield from detection an undocumented person in any place.

Acting Director Homan’s comment was specifically directed at California elected officials following the enactment of the *California Values Act* (CVA). The CVA limits the obligation of state and local governments to enforce federal immigration laws, but also grants discretion to assist federal law enforcement where felonies and serious misdemeanors are involved. In an oversight hearing before the Senate Judiciary Committee on January 16, 2018, Secretary Kirstjen Nielsen confirmed that “[t]he Department of Justice is reviewing what avenues might be available [to the Department of Homeland Security to charge elected officials such as these].”

We are not aware of any instance where duly elected state officials have been placed under threat of arrest and federal prosecution for acting in their official capacity pursuant to a validly-promulgated law by the state legislature. As Senators who sit on the Senate Judiciary Committee with oversight over both your agencies, we ask for the legal and factual bases for this request, and information about the consideration of this request.

Please provide answers to the following:

- **Provide any written or verbal communications** from the Department of Homeland Security or the White House requesting that the Department of Justice look into criminal

charges for elected officials that allegedly are harboring illegal aliens under 8 USC section 1324 or any other source of federal law.

- ***Provide any historical precedent or legal bases*** for federal officials to arrest and prosecute any state official operating in their official capacity pursuant to a law promulgated by a state legislature and signed by the governor.
- ***Identify any prior instance*** where a federal agency has sought a referral to the Department of Justice to arrest and prosecute any state official operating in their official capacity pursuant to a law promulgated by a state legislature and signed by the governor.

Please provide us with a response by February 1, 2018.

Sincerely,



The image shows two handwritten signatures in black ink. The signature on the left is for Kamala D. Harris, and the signature on the right is for Dianne Feinstein. Below each signature is a yellow rectangular stamp containing the text "U.S. Senator Kamala D. Harris" and "U.S. Senator Dianne Feinstein" respectively.

U.S. Senator Kamala D. Harris

U.S. Senator Dianne Feinstein